



03-15-01

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#4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Thomas W. Kleinpeter III, et al.

Serial No.:

09/693,393

Filing Date:

October 20, 2000

Group Art Unit:

Examiner:

Title:

**S&M FOR ENABLING FILE TRANSFERS EXECUTED IN A
NETWORK ENVIRONMENT BY A SOFTWARE PROGRAM**

Honorable Asst. Commissioner
of Patents
Washington, D.C. 20231

RECEIVED

MAR 19 2001

OFFICE OF PETITIONS

Dear Sir:

Certification Under 37 C.F.R. 1.10

I hereby certify that this correspondence is being deposited with
the United States Postal Service as Express Mail to Addressee
in an envelope addressed to: Assistant Commissioner of
Patents, Washington, D.C. 20231, on March 14, 2001.

Janice Pampell
Janice Pampell

Petition for Earlier Filing Date

The patent application serial number 09/693,393 entitled "System and Method for Enabling File Transfers Executed in a Network Environment by a Software Program" was granted a filing date of October 20, 2000 by the United States Patent and Trademark Office ("USPTO"). Applicants hereby petition under 37 C.F.R. §1.183 that an earlier filing date of October 19, 2000 be granted. The circumstances giving rise to this petition are as follows:

On Thursday, October 19, 2000, attorney for the Applicants, Armando Pastrana, completed the present patent application and signed the necessary papers. Also on that day, Janice Pampell, acting as Mr. Pastrana's assistant, completed and signed a certificate of mailing for the patent application (a copy is attached as Exhibit 1) and sealed the application in an Express Mail envelope (a copy of the Express Mail label is attached as Exhibit 2). The envelope was then delivered to an independent copying and mail contractor, IKON, which handled incoming and outgoing packages for the Applicants' attorneys. According to IKON, the Express Mail envelope was picked up by Corporate, Financial and Industrial Delivery ("CFI"), a courier service, with instructions for immediate delivery to the United States Postal Service ("USPS"). It was, in the experience of IKON and the attorneys for the Applicants, the regular practice of CFI to deliver Express Mail packages to the USPS the same day and return executed Express Mail receipts the next morning. In several previous cases, CFI had

assiduously deposited Express Mail packages with the post office on the same day that the packages were picked up, in accordance with the policy and instructions of the attorneys for the Applicants. Based on the previous practices of CFI and the information available to them, Mr. Pastrana and Ms. Pampell had a good faith belief that the package would be mailed in the normal course of business no later than October 19, 2000. However, on October 19, 2000, the employee assigned to deliver the present application, "forgot" the package in his car and failed to timely convey it to the USPS (see Exhibit 3, letter from CFI). The employee did not remember the package until the next morning (October 20, 2000), at which time he delivered it to the USPS for Express Mail delivery (see Exhibit 3). The application was accorded a filing date of October 20, 2000 by the USPTO based upon the "date-in" notation of the Express Mail receipt (see Exhibit 2). See 37 C.F.R. §1.10(a) *infra*. The CFI employee who delivered the package was subsequently discharged by CFI as being unreliable (see Exhibit 3).

37 C.F.R. §1.10(a) states that "[a]ny correspondence . . . that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service . . . will be considered filed by the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label . . ." Under this section, as applied to the Express Mail mailing label received by the USPTO, the filing date would be October 20, 2000 (as was accorded by the USPTO). Applicants do not contend that the date of deposit was illegibly or improperly entered by the USPS (see 37 C.F.R. §§1.10(b), (c), and (d)), or that the application was not received by the USPTO (37 C.F.R. §1.10(d)). Rather, Applicants respectfully petition the Commissioner under 37 C.F.R. §1.183 to suspend the requirements of 37 C.F.R. §1.10 and to grant an earlier filing date to the present application. Under 37 C.F.R. §1.183, the Commissioner may "[i]n an extraordinary situation, when justice requires" suspend or waive any requirement of the regulations which are not a required by a statute.

It is Applicants' belief that the earlier filing date should be granted because, as Applicants respectfully submit, the Applicants took reasonable steps to properly deposit the application with the United States Postal Service for Express Mail delivery on October 19, 2000. To this end, Applicants deposited the present application with CFI, giving instructions that the application must be delivered the same day (October 19, 2000) to the USPS for "Express Mail to addressee" shipment. Up until that date, CFI had provided impeccable service, strictly following the same day delivery instructions. Applicants gave control of the application to the courier service with a reasonable good faith belief, based on the standard practice of CFI and past experience with the company, that CFI would deposit the application with the USPS on the

same day. Thus, the Applicants intended to and took reasonable steps to deposit the present application with the USPS for "Express Mail to addressee" service on October 19, 2000. The failure of the CFI was an extraordinary event of disgraceful service that could not have been reasonably foreseen by Applicants. But for this unforeseeable lapse in diligence by CFI, the application would have been deposited with the USPS on October 19, 2000. An occurrence of this type had not previously occurred and has not been repeated.

Applicants respectfully submit that the granting of the earlier filing date will serve the interests of justice because the present application claims priority to provisional application No. 60/160,402, filed October 19, 1999. If the earlier filing date is not granted, the present application will be unjustly prejudiced through a loss of priority. In light of the extraordinary circumstances described above, and in the interest of justice, Applicants respectfully entreat the Commissioner to suspend the requirements of 37 C.F.R. §1.10 and grant a filing date of October 19, 2000.

The Applicants appreciate the time taken by the Commissioner to fully review this petition. Ms. Pampell, based on her knowledge and belief has attested to the facts presented in this Petition for Earlier Filing Date (a Declaration is attached as Exhibit 4). Enclosed are a copy of the certificate of mailing receipt signed by Ms. Pampell (Exhibit 1), a copy of the Express Mail mailing label dated October 20, 2000 (Exhibit 2), a copy of letter from CFI regarding the failure to deliver the application (Exhibit 3), a Declaration from Ms. Pampell (Exhibit 4) and a check for One Hundred and Thirty Dollars (\$130) representing the petition fee required by 37 C.F.R. §§1.183 and 1.17(h).

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-0456 of Gray Cary Ware & Freidenrich LLP.

Respectfully submitted,

Gray Cary Ware & Freidenrich LLP
~~Attorneys for Applicants~~

Steven Sprinkle
Reg. No. 40,825

Dated: March 14, 2001

100 Congress Avenue
Suite 1440
Austin, TX 78701
(512) 457-7025

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MAR 19 2001

OFFICE OF PETITIONS



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

the Application of:

Thomas W. Kleinpeter III, et al.

Date Filed:

October 19, 2000

Title:

**System and Method for Enabling File Transfers
Executed in a Network Environment by a Software
Program**

ATTN: BOX PATENT APPLICATION

Hon. Assistant Commissioner of Patents

Washington, D.C. 20231

Dear Sir:

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that the attached Transmittal Form, Patent Application, Declaration and Power of Attorney, Informal Drawings, appropriate filing fee, and postcard are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on this 19th day of October, 2000 and is addressed to the Assistant Commissioner of Patents, Washington, D.C. 20231 Attn: Box Patent Applications.

Janice Pampell
Janice Pampell

Express Mail Receipt No.:

EL562562543US

Attorney's Docket:

AUDIO1100-1

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TO ADDRESSEE



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| ORIGIN (POSTAL USE ONLY) | | | DELIVERY (POSTAL USE ONLY) | | |
|--|--|--|---------------------------------|---|--------------------|
| PO ZIP Code | Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second | Flat Rate Envelope <input type="checkbox"/> | Delivery Attempt | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | Employee Signature |
| Date In Mo. Day Year | <input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM | Postage \$ | Delivery Attempt | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | Employee Signature |
| Time In <input type="checkbox"/> AM <input type="checkbox"/> PM | Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day | Return Receipt Fee | Delivery Date | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | Employee Signature |
| Weight lbs. ozs. | Int'l Alpha Country Code | COD Fee Insurance Fee | Signature of Addressee or Agent | | |
| No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | Acceptance Clerk Initials | Total Postage & Fees \$ | X Name - Please Print X | | |

| CUSTOMER USE ONLY | |
|---|--|
| METHOD OF PAYMENT: Express Mail Corporate Acct. No. X920234 | |
| <input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery. | |
| Federal Agency Acct. No. or Postal Service Acct. No. | <input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday Customer Signature |

| FROM: (PLEASE PRINT) | TO: (PLEASE PRINT) |
|---|--|
| PHONE () CLIENT/MTR. 105000 991101 GRAY CARY WARE & FREIDENRICH, LLP 100 CONGRESS AVE STE 1440 AUSTIN TX 78701-4042 Janice Pampell | PHONE () ATTN: BOX Patent appln. HONORABLE ASSISTANT COMMISSIONER OF PATENTS WASHINGTON DC 20231-0001 |

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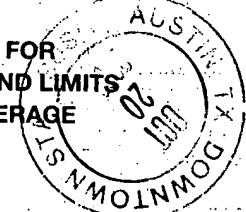
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ON INSURANCE COVERAGE



Customer Copy
Label 11-F July 1997

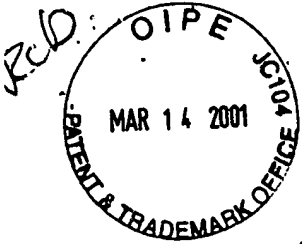
| ORIGIN (POSTAL USE ONLY) | | |
|--|---|--|
| PO ZIP Code 78701 | Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second | Flat Rate Envelope <input type="checkbox"/> |
| Date In 16 20 00 Mo. Day Year | <input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM | Postage \$ 15.75 |
| Time In 8 00 <input type="checkbox"/> AM <input type="checkbox"/> PM | Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day | Return Receipt Fee |
| Weight 11.9 lbs. ozs. | Int'l Alpha Country Code | COD Fee Insurance Fee |
| No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday | Acceptance Clerk Initials | Total Postage & Fees \$ 15.75 |

| CUSTOMER USE ONLY | |
|---|--|
| METHOD OF PAYMENT: Express Mail Corporate Acct. No. X920234 | |
| <input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery. | |
| Federal Agency Acct. No. or Postal Service Acct. No. | <input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday Customer Signature |

| FROM: (PLEASE PRINT) | TO: (PLEASE PRINT) |
|---|--|
| PHONE () CLIENT/MTR. 105000 991101 GRAY CARY WARE & FREIDENRICH, LLP 100 CONGRESS AVE STE 1440 AUSTIN TX 78701-4042 Janice Pampell | PHONE () ATTN: BOX Patent appln. HONORABLE ASSISTANT COMMISSIONER OF PATENTS WASHINGTON DC 20231-0001 |

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C.F.I. DELIVERY SERVICE
1000 EAST SEVENTH STREET
AUSTIN, TEXAS
PHONE (512) 320-5446

To whom it may concern:

CFI Delivery company has been making mail deliveries for Gray Cary Ware & Freidenrich for the past few weeks.

We do a morning post office pick-up to deliver to Gray, Cary and an afternoon pick-up of mail to deliver to the post office.

On the evening of October 19, 2000 our driver assigned to make the mail run separated the regular mail from the express mail. He delivered the regular mail to the bulk mail receiving area and forgot to deliver the express mail at the front customer service counter.

After realizing he forgot the next morning he then delivered the express mail to the post office which caused the postmark date to be one day later.

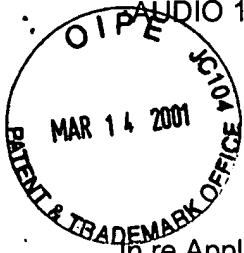
This was the driver's mistake and actions have been taken.

I do apologize for any problems this may have caused and I can reassure you that there will be no issues of this matter in the future.

Please call me if there anything else I can do for you.

Allen Meny

Austin Manager



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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MAR 19 2001

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In re Application of:
Serial No.:
Filing Date:
Group Art Unit:
Examiner:
Title:

Thomas W. Kleinpeter III, et al.
09/693,393
October 20, 2000

**S&M FOR ENABLING FILE TRANSFERS EXECUTED IN A
NETWORK ENVIRONMENT BY A SOFTWARE PROGRAM**

**DECLARATION IN SUPPORT OF
PETITION FOR EARLIER FILING DATE 37 C.F.R. § 1.183**

I, Janice Pampell, declare that I am an employee of Gray Cary Ware & Freidenrich LLP, attorneys of record for the above-referenced patent application, and make the following statements in support of the Petition for Earlier Filing Date for this application under 37 C.F.R. 1.183.

1. On October 19, 2000 Armando Pastrana, attorney for the Applicants, completed the above-referenced patent application and signed the necessary papers. On that day, I, acting as Mr. Pastrana's assistant, completed a certificate of mailing, sealed the above-referenced application with the certificate of mailing in a United States Postal Service Express Mail envelope addressed to "Attn: Box Patent Appln, Honorable Assistant Commissioner of Patents, Washington D.C. 20231-0001."
2. On October 19, 2000 IKON, an independent mail and copying contractor of Gray Cary Ware & Freidenrich LLP, picked up the Express Mail envelope containing the above-referenced patent application from my desk.
3. At or about 5:45 P.M. on October 19, 2000 Corporate, Financial and Industrial Delivery (CFI) picked up the Express Mail envelope containing the above-referenced patent application from IKON. CFI had instructions to immediately deliver the Express Mail envelope containing the above-referenced patent application to the USPS for Express Mail delivery to the USPTO.
4. On October 19, 2000 the employee of CFI assigned to deliver the Express Mail envelope containing the above-referenced patent application to the USPS forgot the Express Mail envelope in his car and failed to deliver it to the USPS on October 19, 2000.
5. On October 20, 2000 the employee of CFI assigned to deliver the Express Mail envelope containing the above-referenced patent application remembered the Express Mail envelope and delivered it to the USPS at 8:06 A.M.
6. On October 24, 2000 I received an executed mailing receipt indicating that the Express Mail envelope containing the above-referenced patent application had not been mailed to the USPTO until 8:06 A.M. on October 20, 2000.

7. The above-referenced patent application was accorded a filing date of October 20, 2000 by the USPTO.

8. On or about October 24, 2000 I received a letter from Allen Meny, the Austin, TX manager of CFI, explaining CFI's failure to deliver the Express Mail envelope containing the above-referenced patent application to the USPS on October 19, 2000.

9. The employee of CFI assigned to deliver the Express Mail envelope containing the above-referenced application has been discharged from service at CFI due to poor service.

10. CFI had not previously failed to deliver Express Mail envelopes to the USPS on the same day that they were picked up from Gray Cary Ware & Freidenrich LLP.

11. CFI has not since failed to deliver Express Mail envelopes to the USPS the same day that the envelopes were picked up from Gray Cary Ware & Freidenrich LLP.

Signed at Austin, Texas this 14th day of March 2001.

By: Janice Pampell
Janice Pampell

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